Remarks

The Communication Regarding Non-responsive Amendment and Response, mailed February 16, 2007, has been received and reviewed. The following is provided in response to the Examiner's four points of omission or matters pertaining to the pending application as set forth in the Communication.

First Matter

The Examiner indicates that Exhibit E-2 shows "the GFX Model G2-12 is used in a vertical water main in a flooded condition for providing instant hot water in a high-rise building (Exhibit E-2, page 2)." According to the Examiner's request, Exhibit E-2 will be submitted via an Information Disclosure Statement. Applicant has done some research regarding a possible first publication date using the "Internet Archive Wayback Machine" for the website recited as "gfxtechnology.com." It appears from the enclosed Attachment P-1, that this website was started in July of 2002 (i.e., as discerned from the first available web site date of July 18, 2002). It does not appear that Exhibit E-2 was available at that date. It appears that the information was available some time between the web site revision of August 13, 2002 (see Attachment P-2 which does not include the "Save Water Too In Condos, Hotels, Dorms, etc." portion of the web site) and the web site revision of August 21, 2002 (see Attachment P-3 which does include this portion including Exhibit E-2).

Further, it is noted that the GFX Model G2-12 is not being used with a water main, but rather in a "potable hot water boiler" system. It is not being used with a water main, nor is it part of a system that includes a heat pump apparatus, such as set forth in claim 1.

Applicant claims priority to the provisional application filed 27 November 2002. As such, based on the information known to Applicant, Exhibit E-2 is not prior art to the pending claimed invention under 35 U.S.C. Section 102(b).

Further, Applicant asserts that the revised "DECLARATION (REVISED) OF PRIOR INVENTION TO OVERCOME CITED PATENT UNDER 37 C.F.R. §1.131" (hereinafter "Revised Declaration") filed 14 February 2006 that has been executed by the inventor clearly

evidences that the inventor conceived the invention as recited in the pending claims prior to any known publication of Exhibit E-2 (e.g., August of 2002) or use of such a system described therein, that such conceived invention was communicated to Mr. Anderson as set forth in the Declaration of Laurence A. Anderson (also filed 14 February 2006), and that this conception was coupled with due diligence from prior to the effective date of the Exhibit E-2 to the filing date (i.e., 27 November 2002) of the provisional application Serial No. 60/429,160 (e.g., constructive reduction to practice) to which the present application claims priority. An element by element presentation of such evidence is provided in the Revised Declaration.

As such, the Exhibit E-2 is not prior art under 35 U.S.C. Section 102(a) (for whatever it shows) against the rejected claims.

Yet further, Exhibit E-2 was published (August 2002) after Applicant had provided information to John Lebo (and such information was available to Carmine Vasille via cc'd e-mail) regarding the insertion of a heat exchanger according to the present invention into a municipal water main (i.e., insertion into a conduit in a flooded state) (see, for example, paragraphs 4 and 5 of the "DECLARATION UNDER 37 C.F.R. 1.131 OF TERRANCE JANSSEN REGARDING SECONDARY CONSIDERATION OF COPYING" filed 6 December 2006). In other words, Exhibit E-2 may be considered as further evidence of copying of the Applicant's invention to insert a heat exchanger in a portion of a fluid conduit that is in a flooded state (e.g., a hot water distribution system such as shown in Exhibit E-2).

The Examiner indicates that pursuant to "Brasseler v. Stryker, 60 USPQ2d, 1482 (Fed. Cir. 2001) applicant is required to use reasonable efforts to ascertain the prior art status of the new materials related to the GFX heat exchanger. . .. " As indicated above, Applicant has used reasonable efforts to attempt to narrow the possibilities of a date for E-2 in view of the "?2002" recited on the document.

Contrary to the Examiner's suggestion that Applicant inquire about this document from various third parties, Applicant believes that this goes beyond any reasonable efforts and reasonable inquiry required. Applicant cannot be expected to contact potentially adverse third parties to obtain information from them without any way of substantiating its truthfulness.

Second Matter

The Examiner has indicated that "applicant is required to disclose to the examiner if the tube coil that is wrapped around the main straight section of pipe of the GFX heat exchanger discussed above is flattened in the manner claimed in original claim 9."

The "Declaration (revised) of Prior Invention to Overcome Cited Patent Under 37 C.F.R. §1.131", filed 14 February 2006, states on page 5 thereof when discussing the method of claim 9, that "at least a portion of the outer surface of the second pipe (e.g., the outer pipe of the 'GFX Double Walled Heat Exchanger') includes at least one flattened surface . . . that is in direct contact with a portion of the outer surface of the first pipe (e.g., inner pipe of the "GFX Double Walled Heat Exchanger') . . .." As such, in response to the Examiner's request, the GFX heat exchanger does include a flattened portion as set forth in the Declaration.

Third Matter

The Examiner "is requiring applicant to disclose if any sort of confidentiality agreement was signed between GFX and Mr. Janssen in regard to Mr. Janssen's water mains heat exchanger idea." And if so, the Examiner is requiring "disclosure of the general terms of that agreement" indicating that "such a confidentiality agreement is extremely material to how much weight to give Exhibit E-3 of the December 6, 2006 response."

There was no confidentiality agreement. However, whether a confidentiality agreement existed or not is irrelevant to the showing of secondary evidence which may be presented by Applicant during prosecution of the application that must be considered by the Examiner. In the present case, copying has occurred by those skilled in the art (hereinafter referred to as "GFX") only after learning of Applicant's invention. The only thing that existence of a confidentiality agreement would show is whether GFX also violated or breached provisions of such an agreement; which is irrelevant to the provision of secondary evidence of copying.

Even if the idea copied presented a new opportunity to expand the market for heat exchanger product, it was still copied whether or not a confidentiality agreement existed.

Fourth Matter

There are no related co-pending applications. The Patent Application Serial No. 10/643,440 cited by the Examiner is not co-pending (i.e., it is abandoned) and not "material to patentability" as recited in MPEP 2001.06(b).

Summary

The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 16th day of May, 2007, at 5:40 pm (Central Time).

Name: Mark Gebhardt

16 May 2007
Date

Respectfully submitted for
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MJG/SJT

INTERNET ARCHIVE
WayBackMachine

Enter Web Address: http:// All Take Me Back Adv. Search Compare Archive P

Searched for http://gfxtechnology.com **125** Results

Note some duplicates are not shown. See all.
* denotes when site was updated.

Search Results for Jan 01, 1996 - Mar 08, 2007

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	
0 pages	0 pages	0 pages	0 pages	0 pages	0 pages	13 pages	24 pages	29 pages	38 pages	1
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						Jul 23, 2002 *	Feb 02, 2003 *	Jan 11, 2004	Jan 09, 2005	Feb
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						Aug 21, 2002 *	Mar 22, 2003	Apr 08, 2004 *	Feb 07, 2005	Feb
						Sep 22, 2002 *	Apr 01, 2003	May 06, 2004 *	Feb 09, 2005	Apr
						Sep 24, 2002	Apr 25, 2003 *	May 19, 2004 *	Feb 12, 2005	Apr
						Oct 16, 2002	May 28, 2003	May 22, 2004	Mar 06, 2005 *	Apr
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									Dec 28, 2005	
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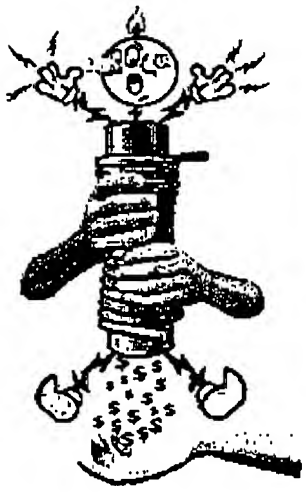
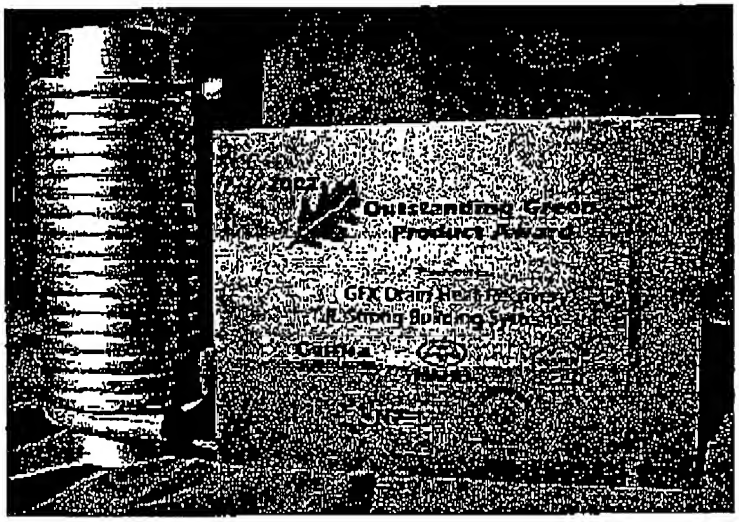
Attachment P-1

GFXtechnology.com

Our Award-Winning GFX Technology Can Upgrade
Efficiency & Power Of Every Water Heating System
Residential Commercial & Industrial





Technology & Applications List Prices Reps Performance-Financing

"Outperforms heat pump water heater" (.pdf)

"Gives an electric water heater the capacity of a gas heater" (.pdf)

6 Million Could Cut Annual CO_2 Emissions 20 Million Tons (.pdf)

New: $75 GFX-Rebate for Energy Star Homes Promotes Electricity Savings Above Energy Star Appliance Upgrades (.pdf)

New: Canadian Energuide/R-2000 Energy-Credits (.pdf)

Attachment P-2
(2pages)
(1)

P-2

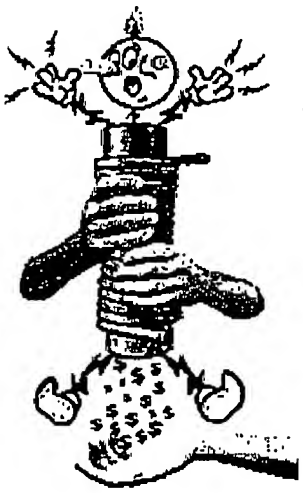
(2)

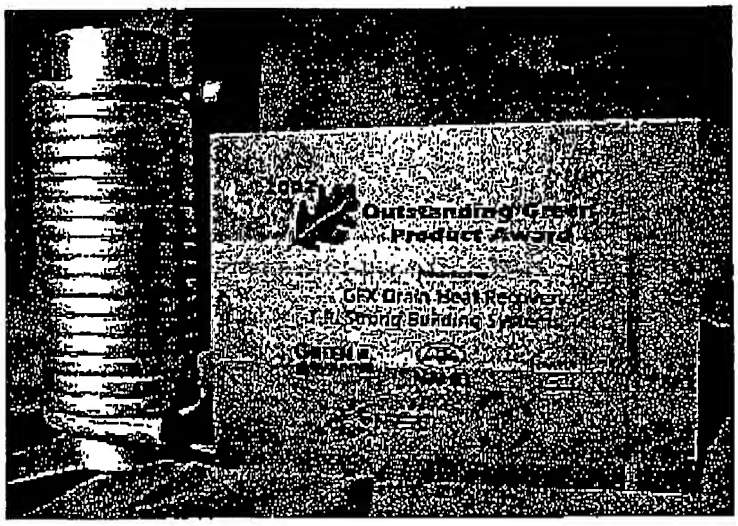
GFXtechnology.com

Our Award-Winning GFX Technology Can Upgrade

Efficiency & Power Of Every Water Heating System

Residential Commercial & Industrial





Technology & Applications List Prices Reps Performance-Financing

"Outperforms heat pump water heater" (.pdf)

"Gives an electric water heater the capacity of a gas heater" (.pdf)

6 Million Could Cut Annual CO_2 Emissions 20 Million Tons (.pdf)

Save More Than Any Energy Star Appliance (.pdf)

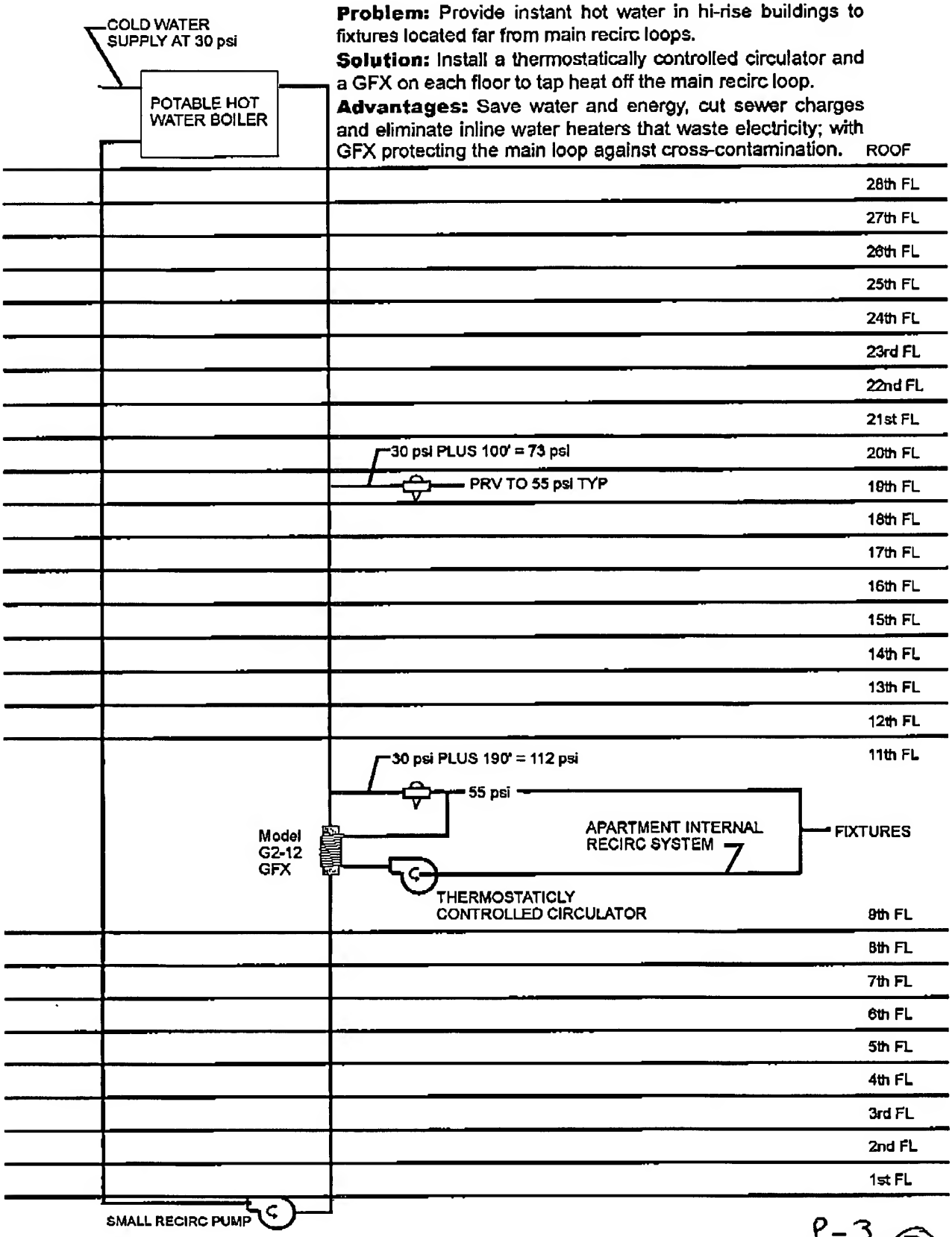
New: $75 GFX-Rebate for Energy Star Homes In Connecticut (.pdf)

New: Save Water Too In Condos, Hotels, Dorms, etc. (.pdf)

New: Canadian Energuide/R-2000 Energy-Credits (.pdf)

Attachment P-3
(4 pages) (1)

Problem: Provide instant hot water in hi-rise buildings to fixtures located far from main recirc loops.
Solution: Install a thermostatically controlled circulator and a GFX on each floor to tap heat off the main recirc loop.
Advantages: Save water and energy, cut sewer charges and eliminate inline water heaters that waste electricity; with GFX protecting the main loop against cross-contamination.



P-3 (2)

LAING AUTOCIRC PUMP

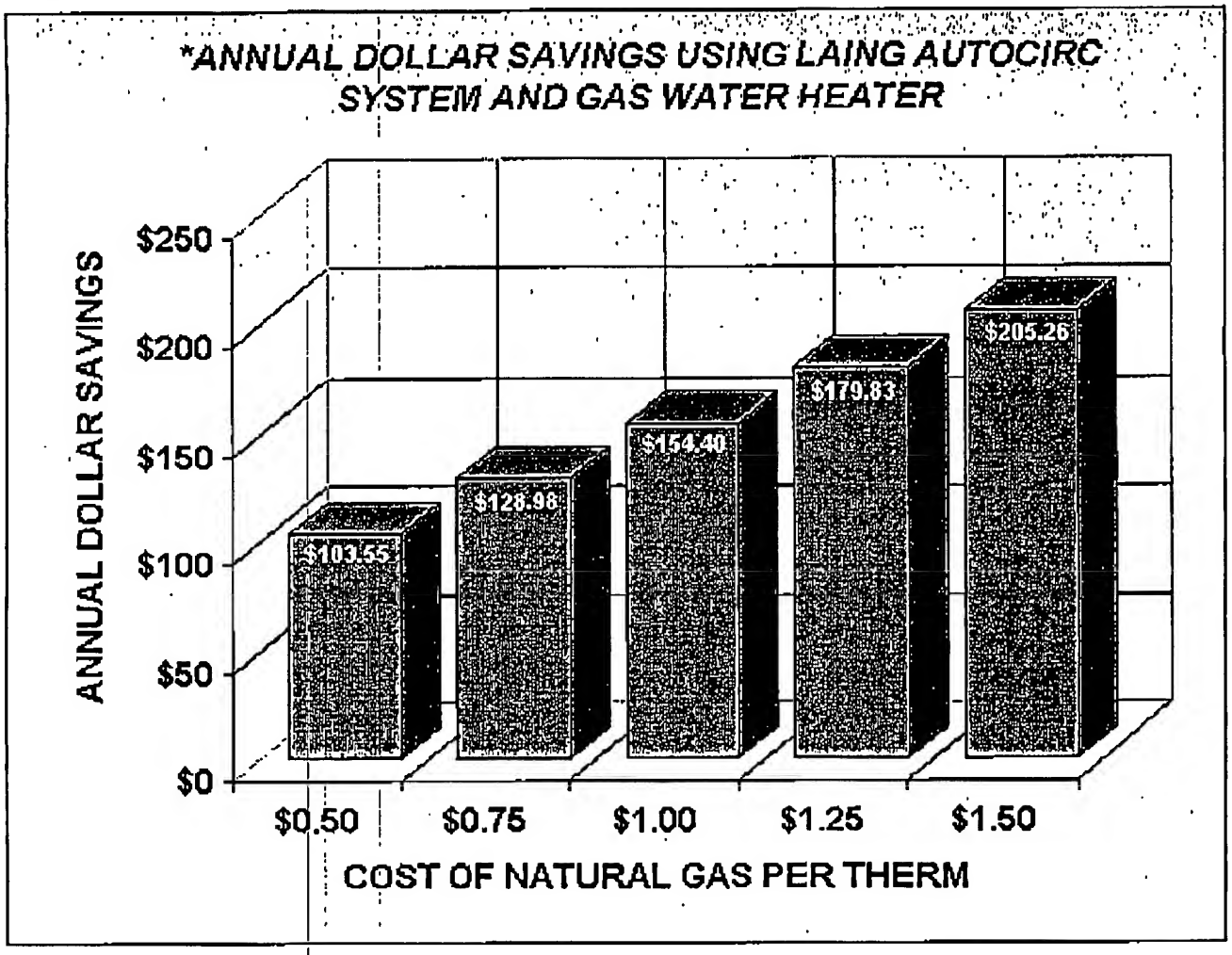


Chart Calculation Factors For Gas Water Heater:

1. Savings of 34.2 gal./day of previously heated water wasted from discharging down drain. (350 days/yr. = 11,970 gal./yr.)
2. Water heater is set at an average temperature of 140°F, has an efficiency rating of 65%, and a heat rise temperature value of 100°F.
3. The incoming water temperature is 40°F.
4. Gas cost per therm includes taxes and charges.
5. Gas savings in therms result from not having to heat wasted water less the gas used to offset piping heat losses. (101.71 therms/yr.)
6. Additional piping heat losses are based on 10 BTU/hr./ft. in 60 feet of ¾" uninsulated hot water supply piping.
7. Water cost is based on $2.02/100 cu. ft. and sewer surcharge cost is based on $1.35/100 ft.3. (Total water cost savings = $53.79/yr.)
8. Cost to run pump = $1.24/yr. (Based on $0.10/kWh, pump running 4 min./hr., 16 hrs./day, and 350 days/yr.)
9. Numbers are rounded off.

p-3

(3)

LAING AUTOCIRC PUMP

Autocirc Savings Using an Electric Water Heater

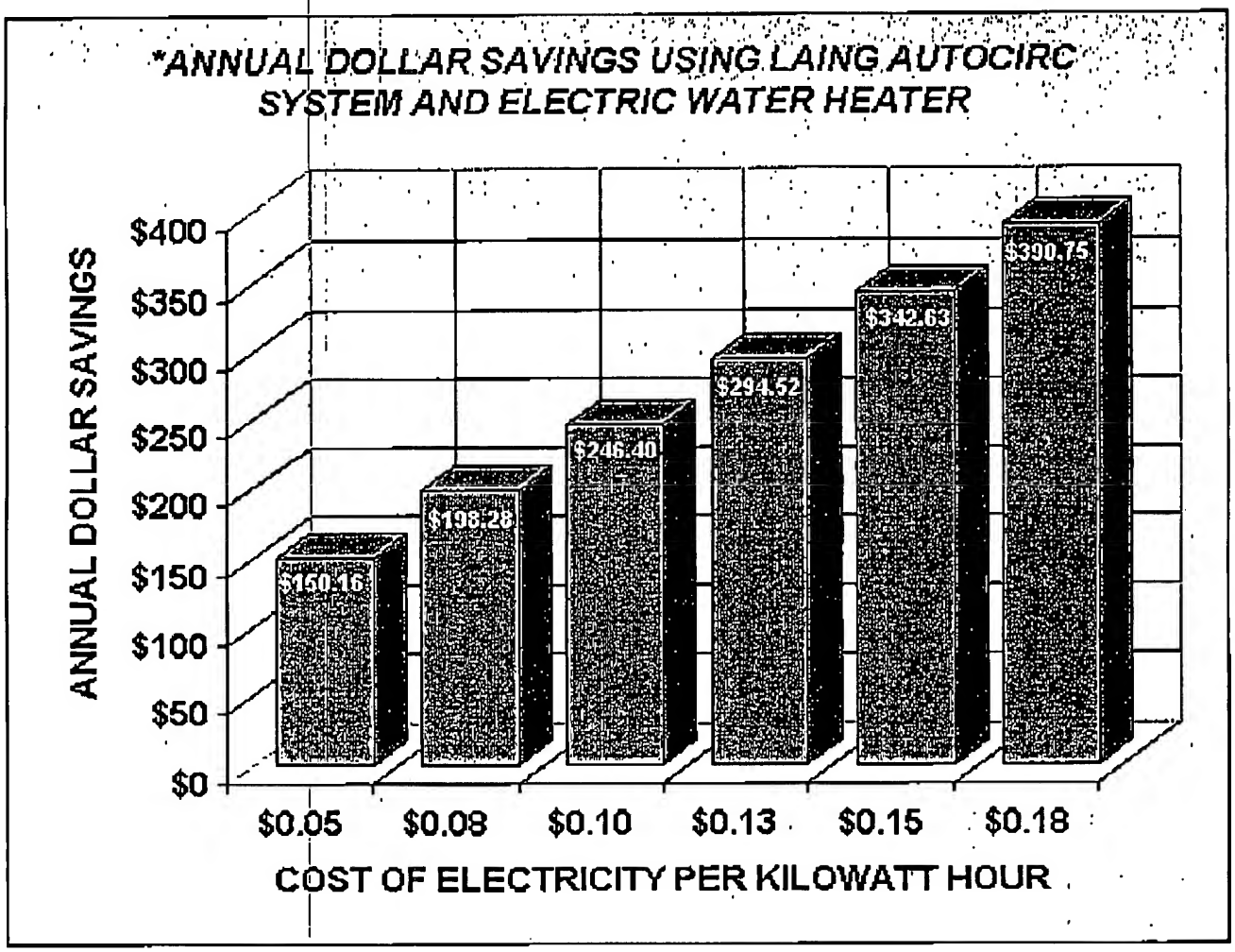


Chart Calculation Factors For Electric Water Heater:

1. Savings of 34.2 gal./day of previously heated water wasted from discharging down drain. (350 days/yr. = 11,970 gal./yr.)
2. Water heater is set at an average temperature of 140°F, has an efficiency rating of 100%, and a heat rise temperature value of 100°F.
3. The incoming water temperature is 40°F.
4. Electrical energy savings in kWh result from not having to heat wasted water less the energy used to offset piping heat losses. (1,924.69 kWh)
5. Cost per kWh includes taxes and charges.
6. Additional piping heat losses are based on 10 BTU/hr./ft. in 60 feet of 3/4" uninsulated hot water supply piping.
7. Water cost is based on $2.02/100 cu. ft. and sewer surcharge cost is based on $1.35/100 ft.3. (Total water cost savings = $53.79/yr.)
8. Cost to run pump = $1.24/yr. (Based on $0.10/kWh, pump running 4 min./hr., 16 hrs./day, and 350 days/yr.)
9. Numbers are rounded off.

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(4)